IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO : 14442 of 2004

Between:

1 V.Anandam, s/o V.Shankaraiah,
residing at H.No.1-1-652/B, Plot No.2-B,

Gandhinagar, Hyderabad-80.
2 Smt.V.Sujatha, w/o V.Anandam,
H.No.1-1-652/B, Plot No.2-B, Gandhinagar, Hyderabad-80.

..... PETITIONER(S)

AND

The Prudential Co.operative Bank Ltd., having its registered office at Rashtrapathi Road, Secunderabad,

represented by its Managing Director

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more particularly one in the nature of writ of mandamus, declaring the action of the respondent in demanding the petitioner to pay the entire amount with interest at the rate of 22% and not at the rate of 6% as agreed orally and consequently direct the respondent to waive off the exorbitant rate of interest.

Counsel for the Petitioner:SMT.PUSHPINDER KAUR

Counsel for the Respondent: MR.S.ASHOK ANAND KUMAR

The Court at the stage of admission made the following ORDER:

The petitioners seek writ of mandamus declaring the action of the respondent in demanding the petitioners to pay the entire amount with interest at the rate of 22% instead of 6% as agreed orally, as arbitrary and illegal.

The first petitioner is the husband of the second petitioner. The 1st petitioner availed overdraft facility to an extent of Rs.22,00,00/- from the respondent Bank. The 2nd respondent stood as guarantor and equitable mortgage has been created in respect of their immovable property. The respondent Bank filed O.P.No.921 of 2001 before the A.P. Cooperative Tribunal at Hyderabad alleging that the petitioners herein failed to adhere to the repayment schedule and therefore seeking recovery of RS.28,60,693-50ps towards the accumulated balance as on 23-10-2001 with contractual rate of interest. The petitioners herein filed counter-affidavit in the said O.P. It is relevant to note that they admitted the fact that they have availed the overdraft facility to the tune of Rs.22 lakhs, but contended that the O.D. facility was sanctioned with a simple interest of 6% per annum and that the claim of the Bank that the contractual rate of interest is 22% per annum with penal interest of 2% per annum is not correct.

The Tribunal below having considered the contentions of both the parties, passed an award dated 25-11-2003 holding that the Bank (the respondent herein) is entitled to recover a sum of Rs.21,99,473/- with contractual rate of interest at the rate of 22% per annum or 21% per annum with quarterly rests minus repayments of

Rs.11,79,645-50ps already made by the petitioners towards the loan account. So far as the dispute raised by the writ petitioners with regard to the rate of interest, the Tribunal recorded a clear finding that the contractual rate of interest was 22% per annum and that was the rate of interest charged by the Cooperative Banks at the relevant time and not 6% per annum as contended by the petitioners. Admittedly, the petitioners did not challenge the said award dated 25-11-2003 and the same has become final.

Even in this writ petition, the petitioners did not assail the finding recorded by the Tribunal in O.P.No.921 of 2001 with regard to the rate of interest, but merely contended that the petitioners are liable to pay interest only at the rate of 6% per annum as agreed orally and seeks a declaration that the action of the respondent Bank in demanding to pay the entire amount due with interest at the rate of 22% per annum is arbitrary and illegal.

In the light of the clear finding recorded by the Tribunal with regard to the contractual rate of interest, I am of afraid that the declaration as prayed for cannot be granted. A perusal of the award dated 25-11-2003 shows that the conclusions of the Tribunal are in conformity with the settled principles of law and do not suffer any infirmity. In the circumstances, the writ petition is devoid of any merit and is accordingly dismissed.

However, the learned counsel for the petitioners submits that the petitioners may be permitted to pay the amount due in instalments. It is always open to the petitioners to make such a request before the respondent Bank, in which event, the same shall be considered in accordance with law.

Subject to the above observation, the Writ Petition is dismissed. No costs.

16th AUGUST, 2004.

Kvni

To

1. The Managing Director, Prudential Co.operative Bank Ltd., having its registered office at Rashtrapathi Road, Secunderabad.

2. Two CD copies.